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H.740

Introduced by Representative Emmons of Springfield

Referred to Committee on

Date:

Subject: Corrections; probation

Statement of purpose of bill as introduced: This bill proposes to revise and update the probation laws to reflect more accurately current policy and practice.

An act relating to technical revisions to probation

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 28 V.S.A. chapter 5, subchapter 1 is amended to read:

Subchapter 1. General Provisions

§ 201. DEFINITIONS

~~Whenever~~ As used in this chapter, unless a different meaning plainly is required,

~~“Probation”~~ “probation” means a procedure under which a respondent, found guilty of a crime upon verdict or plea, is released by the court, without confinement, subject to conditions imposed by the court and subject to the supervision of the ~~commissioner~~ Commissioner.

1 § 202. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER
2 REGARDING PROBATION

3 The ~~commissioner~~ Commissioner shall be charged with the following
4 powers and responsibilities regarding the administration of probation:

5 (1) To maintain general supervision of persons placed on probation, and
6 to prescribe ~~rules~~ conditions, consistent with any orders of the court, governing
7 the conduct of such persons;

8 (2) To supervise the administration of probation services and establish
9 policies and standards and ~~make~~ adopt rules regarding probation investigation,
10 supervision, ~~ease work~~ casework and ~~ease loads~~ caseloads, record keeping, and
11 the qualification of probation officers;

12 (3) To use electronic monitoring equipment such as global position
13 monitoring, automated voice recognition telephone equipment, and
14 transdermal alcohol monitoring equipment to enable more effective or efficient
15 supervision of individuals placed on probation. Transdermal alcohol
16 monitoring equipment shall be used for such purposes as discouraging persons
17 whose licenses have been suspended for DUI from operating motor vehicles on
18 Vermont highways.

19 § 203. PROBATION WARRANT

20 (a) Whenever a probationer is placed in the custody of the ~~commissioner~~
21 Commissioner, the court shall furnish the ~~commissioner~~ Commissioner with a

1 warrant setting forth the name of the probationer, the nature of the crime of
2 which he or she was convicted, the date and place of trial and sentence, the
3 sentence imposed, the order of the court committing ~~him or her~~ the probationer
4 to the charge of the ~~commissioner~~ Commissioner, and the conditions of his or
5 her release.

6 (b) The warrant shall be full authority for the exercise by the ~~commissioner~~
7 Commissioner of all the rights and powers over and in relation to the
8 probationer prescribed by law and by the order of the court.

9 (c) The warrant shall be sufficient authority for the apprehension and
10 detention of the probationer by the ~~commissioner~~ Commissioner or by any
11 officer acting under his or her direction at any time or place.

12 § 204. ~~SUBMISSION OF WRITTEN REPORT~~ PRESENTENCE

13 INVESTIGATION AND REPORT; PROTECTION OF RECORDS

14 (a) A court, before which a person is being prosecuted for any crime, may
15 in its discretion order the Commissioner to submit a written report as to the
16 circumstances of the alleged offense and the character and previous criminal
17 history record of the person, with recommendation. If the presentence report is
18 being prepared in connection with a person's conviction for a sex offense that
19 requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3, the
20 Commissioner shall obtain information pertaining to the person's juvenile
21 record, if any, in accordance with 33 V.S.A. §§ 5117 and 5119(f)(6), and any

1 deferred sentences received for a registrable sex offense in accordance with
2 13 V.S.A. § 7041(h), and include such information in the presentence report.

3 (b) The court shall order ~~such a report to be made before~~ a presentence
4 investigation and report prior to imposing a sentence when the ~~respondent~~
5 person is adjudged guilty of a felony, except as otherwise provided by ~~rules of~~
6 ~~the Supreme Court~~ the Vermont Rules of Criminal Procedure. If ~~the report has~~
7 ~~been made to any court within the State~~ a presentence investigation and report
8 has been conducted on the person within ~~a period of~~ the previous two years
9 ~~with reference to such individual, in connection with the same or another~~
10 ~~offense~~, submission of a copy of that report may fulfill the requirements of this
11 ~~section, if the court to which the report is to be submitted approves~~ upon
12 approval of the court. Upon request, the Commissioner shall furnish ~~a State's~~
13 ~~Attorney~~ the prosecutor with a copy of any report made within the State once
14 sentence has been passed in connection with the offense for which the report
15 was made.

16 (c) The report ordered by the court under this section or section 204a of this
17 title shall be made not less than one week nor more than three weeks from the
18 date of the order. This ~~three-week~~ three-week limit may be extended by order
19 of the court.

20 (d) Any presentence report, preparole report, or supervision history
21 prepared by any employee of the Department in the discharge of the

1 employee's official duty, except as provided in subdivision 204a(b)(5) and
2 section 205 of this title, is confidential and shall not be disclosed to anyone
3 outside the Department other than the judge or the Parole Board, except that
4 the court or Board may in its discretion permit the inspection of the report or
5 parts thereof by the State's Attorney, the defendant or inmate, or his or her
6 attorney, or other persons having a proper interest therein, whenever the best
7 interest or welfare of the defendant or inmate makes that action desirable or
8 helpful. Nothing in this section shall prohibit the Department for Children and
9 Families from accessing the supervision history of probationers or parolees for
10 the purpose of child protection.

11 (e) The presentence report ordered by the court under this section or section
12 204a of this title shall include the comments or written statement of the victim,
13 or the victim's guardian or next of kin if the victim is incompetent or deceased,
14 whenever the victim or the victim's guardian or next of kin choose to submit
15 comments or a written statement.

16 (f) Except as otherwise provided by law, reports and records subject to this
17 section may be inspected, pursuant to a court order issued ex parte, by a State
18 or federal prosecutor as part of a criminal investigation if the court finds that
19 the records may be relevant to the investigation. The information in the files
20 may be used for any lawful purpose but shall not otherwise be made public.

21 * * *

1 § 206. EXPENSES OF PROBATIONER

2 When a person is placed on probation, the ~~commissioner~~ Commissioner
3 may expend such sums as deemed necessary for the temporary support of the
4 person, his or her traveling expenses, or other purposes consistent with the
5 policies of the ~~department~~ Department regarding probationers.

6 § 207. FINAL JUDGMENT

7 Notwithstanding the fact that a sentence to probation can subsequently be
8 modified or revoked in accordance with subchapters 2 and 3 of this chapter, a
9 judgment which includes such a sentence shall constitute a final judgment for
10 all other purposes.

11 * * *

12 Sec. 2. EFFECTIVE DATE

13 This act shall take effect on July 1, 2016.